

Britannicus THE *8122 aa.1*
JUSTICE
OF
PARLIAMENTS

On corrupt Ministers, in *Impeachments*
and Bills of *Attainder*, consider'd.

To which is subjoin'd,

An Account of the several CHANCELLORS,
who have been impeached, from the *Conquest*
to this Time : With some particular
Remarks on the Cases of the Lords
Chancellors WOLSELY and BACON.

*Robbery is apparent, and bath the Face of a Crime;
but Extortion puts on the Visor of Virtue for Expedi-
tion of Justice.* Coke on Littlet.

*Thieves for their Robb'ries have Authority,
When Judges steal Themselves. —* Shakesp.

L O N D O N :

Sold by J. ROBERTS in *Warwick Lane*, 1725.
(Price One Shilling.)

THE
JUSTICE
OF
PARLIAMENTS

On corrupt Ministers in England
and this of Ministers considered.

To which is referred

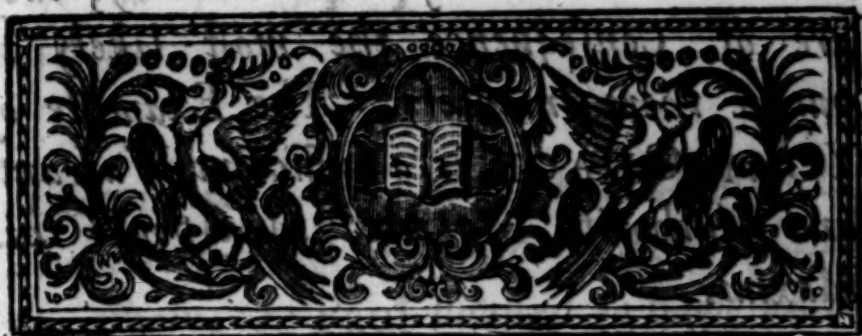


tion of Justice.

W. von Jäger, 1. 1. 1871.

W. O. D. O. W.

Sold by J. R. R. & Co. (Selling)



To his Grace,

The Duke of WH--T-N.

MY LORD,

Always consider YOUR GRACE
 in Two distinguish'd Lights,
 which adorn a Nobleman, That
 of a fine Genius, and That of
 a true Patriot. I don't know whether to
 call the Latter a Consequential Virtue;
 but it is evident to me that, as Persons
 of the brightest Parts must soonest find

out the Interests of their Country, they are of Consequence the most likely to pursue them intensely. The Example of YOUR GRACE is a sufficient Warrant, and Authority, to Me, to espouse this Maxim.

IT is no small Commendation to make a Figure in the most august Assembly that Europe boasts of; and to have the Force of your Eloquence more conspicuous from the Integrity of your Sentiments. YOUR GRACE is not a CICERO in a single Capacity, a Talent of fine Speaking only; but you are Such too in asserting the just Rights of your fellow Subjects, and making a generous Stand against any Attempts of Oppression and Iniquity. A Prince, who is a Guarantee for the Liberties of a Country, has generally an Equivalent of Recompence thrown in by Treaty, to excite him to the noble Office of Protection; but a Patriot acts upon yet more exalted Motives, as his Service is gratuitous, and he is giving publick Redress, while

while he satisfies private Honour and
Conscience.

I cannot make Use of the Word Patriot,
without reflecting on another Great Man,
from whom, as Paul boasted to have been
bred up at the Feet of Gamaliel, YOUR
GRACE will not blush to have copied
Beauties and Instruction. It is no more
Wonder that he had a peculiar Deference
for YOUR GRACE, than that he was
the Darling of his Country, and a
Terror only to bad Men. But He is no
more; and, as DIDO said of her dead
Husband,

Amores

Abstulit: ille habeat Secum, servetq; Sepulcro.

IT was a National Loss, when my
Lord COWPER was snatch'd away; and
it stands upon YOUR GRACE to
transmit that Noble Model of Nobility,

lity, which you could not but admire, and have either studied, or were born, to imitate.

ONE would always wish to live in a quiet and virtuous Age for the Sake of One's Self and Fellow Subjects; but then, as the Skill of a Sailor is best prov'd in a Storm, so the Virtues of a Patriot are most distinguish'd, whenever Commotions embroil the Republick. It is at such Times that the general Eyes are turn'd on such as YOUR GRACE; when you make the fine Picture of NEPTUNE in the Poet, serene in the midst of Tempest, and rebuking the Winds that first stir'd it. In that unhappy Period of Corruption, by which so many Families and Fortunes were shatter'd, YOUR GRACE exerted yourself in tracing the Springs of Fraud, and detecting Those who abetted it behind the Curtain. I doubt not, there are still Occasions among Us, in which the Vigilance and Vir-
tues

tues of a PATRIOT may find Exercise; but these are not for me to dictate.

I remember the Observation of the Roman SATYRIST, That Poor Men dare not speak out in many Cases;

————— Plurima sunt, quæ
Non audent homines pertusâ dicere Lænâ.

The Government, indeed, under which that Poet liv'd, was more rigid and arbitrary, than, I hope, we shall ever find it to be in England. Yet tho' we have no Inquisition here, a Man, without a little Caution, might stir up the Ashes of Affliction round him, and be only heard of for a Misfortune incurr'd by his Rashness. I assure YOUR GRACE, that I have no such Views before me: If these Sheets are acceptable to you on Perusal; my Aims are chiefly

ly answer'd; if not, they at least give
me an Opportunity of subscribing my
self,

My Lord,

YOUR GRACE's

Most Obedient

Humble Servant

BRITANNICUS

THE



[1]

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OF
PARLIAMENTS, &c.

INTRODUCTION.

IT is a fine Observation of CÆSAR, or of SALUST for him, That Men of an obscure Class have a much greater Licence of Conduct than Those in an elevated Station, because they are much less liable to publick Observation: Their Reputations and their Fortunes are upon a Levell; and the Steps they take in Life are little known, and less talk'd of. But Men, that are high in Office and Employments of State, stand, as it were, on an Eminence; their Motions are discern'd

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cern'd by every Eye, and descanted on by every Tongue; therefore they are more restrain'd in the Course of their Actions. †

AND as Envy from Inferiors always pursues those who are above them in Estate, or Quality; That Passion is sure to put a Comment of Disadvantage on all they do; their best Actions are lessen'd by some ugly Censure; but the least indirect Steps they take aggravated, and set out in the most glaring Colours. The Nature of their Crime alters, and takes a fresh Gloss, and Degrees of Heinousness, from the Character and Circumstances of the Persons by whom committed; and as the *Satyrists* justly remarks, *

— *Still more publick Scandal Vice extends,
As He is Great, and Noble, who offends.*

WE make Allowances to poor Rogues and *undignified* Delinquents, from Poverty and Necessities driving them to unwarrantable Shifts for a Subsistence; but we have not the same Room to excuse Criminals, who are paid largely and have ample Perquisites for doing Justice, yet cannot persuade themselves to act with Conscience and Integrity.

WHEN I say *we make Allowances*, I would be understood to mean that we are willing to make Excuses, in mitigation of their Crime, from the Strength and Pressure of their Necessities; for the Law admits of no such Considerations to qualify

† Qui demissi in obscuro vitam agunt, si quid Iracundiâ deliquere, pauci sciunt; Fama atque Fortuna eorum pares sunt; qui, magno Imperio præditi, in excelsis ætatem agunt, eorum facta curæ mortales novêre. Itâ in maxumâ fortunâ minima licentia est.

Sal. in Bello Catilin.

* Omne Animi vitium tanto conspectius in se Crimen habet, quanto Major, qui peccat, habetur.

Juven.

lisy Offence. *Want* and *Poverty* may be urg'd to excite Compassion in a *Fury*, but can never alter the *Justice*, or *Nature*, of a *Verdict*. If therefore the Law holds its Course, even where Distress puts in a Plea for Indulgence, how much more constant, and impartial, ought it to be, in the Cases of Those, who have no Pretensions to that Indulgence?

THERE can hardly be imagin'd a Crime, or Injury, that one Subject can commit against another, or the Crown, which the Wisdom of our Legislature, by some Statute or other, has not provided against; and where the Degree of the Criminal adds an Aggravation to the Crime, our Laws would certainly be most defective, if Justice could be aw'd, restrain'd, or baffled.

IF we will look back into our own Histories, we shall find that neither *Quality* of *Person*, nor *Dignity* of *Office*, have made the *Justice* of the Nation wink at Transgression, or bore the Parties out with *Impunity*. The *Judges* themselves, the great Oracles of Law, and Dispensers of Equity, when, thro' Human Frailties, or Human Passions, they have departed from Justice, have been as obnoxious to Sentence and Punishment, as the meanest *Culprits* try'd before them; and were accountable to Power both for their *corrupt Actions*, and *corrupt Judgments*.

IN the Time of King *Alfred*, a Number of Justices were in one Year hang'd as Homicides, for their false Judgments: That Law, indeed, as my Lord COKE observes, has been long since antiquated, yet may serve for a Memorial of the Time past.

To come therefore nearer to our own Times, and under the Laws by which we are now regulated. So early a Provision was made for the due Administration of Justice, that, in the 18th

Year of EDWARD the 3d, an Oath was enjoyned to be taken by them, to whom this Office was intrusted, for the faithful Discharge of their Duty. I shall give the Substance of this Oath in brief, because it is very expresse; and contains a Consent of the Parties to a Penalty, in case they swerv'd from It. *Ye shall swear, that well and lawfully ye shall serve the King and his People in the Office of Justice; that ye shall do equal Law and Execution of Right to all his Subjects, rich and poor, without having Regard to any Person; that ye take not by your Self or by other, privily nor apertly, Gift or Reward of Gold, nor Silver, nor of any other Thing which may turn to your Profit, unless it be Meat or Drink, and that of small Value, of any Man having Plea or Process before you, as long as the same shall be hanging, nor after for the same Cause; that ye take no Fee, as long as ye be Justice, nor Robes of any Man great or small, but of the King himself; that ye deny to no Man common Right, by the King's Letters, nor none other Man's, nor for none other Cause; and in case any Letters come to you, contrary to the Law, that ye do nothing by such Letters, but certify the King thereof, and proceed to execute the Law, notwithstanding the same Letters: And in case ye be from henceforth found in Default in any of the Points aforesaid, ye shall be at the King's Will, of Body, Lands, and Goods, thereof to be done as shall please him, as God you help and all Saints.* And afterwards, in the 26th Year of the same King, a Statute was made, taking notice of this Commandment to all the Judges, and of their being sworn to take no Fee or Reward, and it is therein subjoin'd, *And for this Cause we have increased the Fees of the same our Justices, in such manner that it ought reasonably to suffice them.*

AND

AND yet notwithstanding this Restriction by Oath, and Addition of Salary, in less than six Years afterwards, Sir *William Thorpe*, the Lord Chief Justice of the Common-Pleas, took a Bribe of several Persons, to the Amount of 90 l. to stay a Writ of Exigent against them: And the Matter coming to light, and being order'd by the King to be examin'd into by the Earls of *Arundel*, *Warwick*, and *Huntingdon*, and the Lords *Grey* and *Burghers*; it was order'd, that he should be hang'd, and that his Lands and Tenements, Goods, and Chattels, should be forfeited. But it appears by the Record, says my Lord COKE, that Sir *William Thorpe* was pardon'd, and restor'd to all his Lands.

THERE were many flagrant Presidents of Corruption and Male-Practice by those upon the Bench, in the preceding Reigns, which made this Oath and Coertion altogether necessary. In the 19th Year of *Edw. 1st.* Sir *Thomas Weyland*, Lord Chief Justice of the Court of Common Pleas, was attainted of Felony, for Bribery, as it has been strongly urg'd by some; but my Lord COKE says, it was for being guilty of being accessary to Murther: Which of the Two was his Crime, it imports not greatly; the Consequence was, that he was glad to take Sanctuary and voluntarily *abjure* the Land. As this Benefit of Law has for these two Centuries been taken away, it may not be amiss *en passant* to say a short Word concerning this ABJURATION. So great was the Devotion towards the Church, from King *Edward the Confessor's* Time, till the 22d, of *Hen. VIII.* That if any Man having committed Felony, could get into the Church, or Church-yard, before he were apprehended, he might not be taken thence to the usual Tryal at Law, but confessing his Fault to the Justices at their Coming, or to the

the Coroner, might be admitted to his Oath, to abjure or forsake the Realm. This part of our Law was in some sort practis'd by the *Saxons*, but more directly by the *Normans*: A Clemency resembling that of the *Roman* Emperors towards such as fled to the Church, or of the *Cities of Refuge* among the *Hebrews*.

THE Year before the Attainder of Sir *Thomas Wayland*, *Adam de Stratton*, a Chief Baron of the Exchequer, was attainted of Felony, and forfeited his Estate to the Value of 26000 *l.* and the very Year before the above mentioned Oath was enjoyn'd, several Justices of Assize took of *John Berners* in *Essex*, so trifling a Bribe as 4 *l.* to shew him favour, and were Fin'd in 4000 Marks for the Offence.

IN the 7th Year of *Richard* 2d. the Chancellor himself was accus'd of receiving a Bribe of 10 *l.* and a Servant of his 4 *l.* and certain Fish, which Bribes, 'tho they were small, yet the offence was great, and had been punish'd suitably, if it had been prov'd. It may be presum'd this Chancellor was of a very sordid and avaritious Spirit, who would turn aside the Course of Justice for so small a private Advantage: But we are to consider that Money was of above three Times the Value then of what it now bears; and we find that, long since those Times, even Chancellors have condescended to very trifling *Premiums*.

NOR do our Records want Instances of Lords Treasurers of *England*, who have stoop'd to take Bribes *colore Officii*. We have one notable Example upon the Rolls of Parliament in the 21st Year of King *James* the 1st. The Case was this. The Farmers of the Customs exhibited a Petition to the King to have certain just allowances, and His Majesty referr'd the same to his Lord Treasurer, who kept the Petitioners depending by artificial

tificial Delays, 'till they gave him several Bribes for Dispatch, and then he gave way to relieve them. Upon a Complaint and Charge of the Commons in Parliament, and evident Proof against him thereupon, the Parliament pass'd this memorable and righteous Sentence. This High Court of Parliament doth adjudge, First, That you L. Earl of M — (now Lord Treasurer of ENGLAND) shall lose all your Offices which you hold in this Kingdom: Secondly, And shall be for ever incapable of any Office, Place, or Employment, in this State and Commonwealth: Thirdly, And that you shall be imprison'd in the Tower of London during the King's Pleasure: Fourthly, And that you shall pay to our Sovereign the King the Fine of fifty thousand Pounds: Fifthly, And that you shall never sit in Parliament any more: And, Lastly, That you shall never come within the Verge of the King's Court.

THIS Judgment may, perhaps, to some appear too severe and rigid, and pronounc'd rather with Odium to the Man, than an Abhorrence of the Matters proved upon him: But it is to be weigh'd on the other Hand, when any Chancellor, Treasurer, or other great Officer of the Crown, becomes guilty of *Briberies, Extortions, Oppressions*, and other grievous *Misdemeanours*, how deeply the Dignity of the King and his Offices is wounded. It is likewise a Consideration of no small Moment, how Conscience is prostituted, and Honour disgrac'd in the Party offending: For as none of these Officers are admitted into their Places, without the previous Qualification of an Oath, for the faithful Execution of Office, of Consequence, whenever they swerve from their Duty, it is a great *Misprison*, as my Lord COKE observes, accompanied with the heinous Crime of *Perjury*. And, Thirdly, it is to be consider'd

too, in Aggravation of such Guilt, how the Royalty of the King is abused in the Persons of his Subjects. Every individual Member of the Commonwealth is in a Possibility of being injur'd in Property, whenever the Course and Current of Justice is obstructed and damm'd up by Expectation of Reward, and Delays interposed in Order to obtain it. It is a golden Maxim in our Law, that Justice must have Three Qualities, it must be free, full, and expeditious, and then it is both Justice and Right: *Oportet esse libera, quia nihil iniquius venali Justitiâ; plena, quia Justitia non debet claudicare; & celeris, quia Dilatio est quadam Negatio*: It must be free, because nothing is more iniquitous than venal Justice; it must be full, because Justice ought not to be lame or imperfect; and it must be expeditious, because every Delay is in some sort a Denial of Right. Whenever therefore the Laws of the Realm are under this even and equitable Administration, it is the best Birthright the Subject hath; for thereby his Goods, Lands, Wife, Children, his Body, Life, Honour, and Estimation, are protected from Injury and Wrong. CICERO was exactly of this Opinion, when he laid down the following Maxim to Posterity, *Major enim Hereditas venit unicuiq; nostrum à jure & legibus, quàm à Parentibus*; A greater and much better Inheritance devolves upon every One of Us from our Right and the Laws, than from our Parents.

I am very apt to think, if we look into the Springs and first Causes of Corruption and Extortion; they will be found to have been deriv'd from this bad Custom, that, in too many Reigns, the supreme Posts of the Kingdom have been sold and barter'd for, not conferr'd with any Regards to Merit, or Qualifications in the Persons to fill them up with Sufficiency, either for the Credit of
the

the Crown, or the Benefit of the Subject. There have been, and will be in all Courts, a Set of *Ear-wigs*, or as SHAKESPEARE has finely express'd it, *Spunges that soak up a King's Countenance, his Rewards, and Authorities*: These Vermin, who are incapacitated for Preferments themselves, dig a Fortune out of the Abuse of Royal Favour, and raise a Revenue out of the Brocage of Places, procur'd by their Intercession. Hence it naturally follows, that They, who are obliged to pay for their own Promotions, think they have a seeming Right to make Money of Those dependent on them. It puts me in Mind of the Distich on Pope Alexander;

*Vendit Alexander claves, altaria sacra;
Vendere jure potest; emerat ille prius.*

THE Practise of the present Times is quite opposite to a Complaint of this Nature, especially with Regard to our CHANCELLORS, who have a considerable Summ paid to them on their Acceptance of the *Seals*; and the Reasons for it are obvious; because they are displaceable at the King's Pleasure, and because they cannot return, from so high a *Station*, to the ordinary Business of pleading at Bar. This Summ therefore is paid to them as an *Equivalent* for the Gains they might have otherwise made in *Practise*; and takes away a Provocation to any Views of sordid Extortion, in disposing of the Offices under them. Besides, when Places in the Law are either bought or sold, if I mistake not, both the *Vendor* and *Purchaser* are disqualified, by an old Statute of the Realm: But let us see what our Records say on this Head.

IN the 12th Year of King RICHARD the 2d's Reign, when Corruption was grown to that enormous Height, that a Petition was presented by

the whole Body of the Kingdom, sueing to the King, that the most wise and able Men within the Realm might be chosen CHANCELLORS, and who might seek to redress the Enormities of the Chancery; the more effectually to discourage the obtaining Offices by Suit, or for Reward, It was enacted, that the Chancellor, Treasurer, Keeper of the Privy Seal, Steward of the King's House, the King's Chamberlaine, Clerk of the Rolles, the Justices of the one Bench, or the other, Barons of the Exchequer, &c. should be firmly sworn, that they should not ordain, name, or make Justices of the Peace, &c. nor other Officer, nor Minister of the King, for any Gift or Brocage, Favour or Affection; but that they should make all such Officers and Ministers of the best, and most lawful Men, and sufficient to their Estimation and Knowledge. *A Law which, as my Lord COKE comments upon it, is worthy to be written in Letters of Gold, but more worthy to be put in due Execution. For certainly never shall Justice be duely administred, but when the Officers and Ministers of Justice be of such Quality, and come to their Places in such Manner as by this Law is requir'd!*

THIS Golden Statute, however, was so imperfect in its Influences, that, notwithstanding several other Acts to the same Tenour, in the 6th Year of King EDWARD the 6th, for the avoiding Corruption which might thereafter happen to be in the Officers and Ministers in those Courts, wherein the true Administration of Justice was requisite to be had, and to the Intent that Persons, worthy to be advanc'd to the Place, where Justice should be so ministred, should be preferr'd to the same, and none others; It was enacted, as to Offices in any wise touching the Administration or Execution of Justice, or Clerkship

ship in any Court of Record, or concerning the King's Treasure, Revenue, Account, Customs, Aulnage, Auditorship, King's Surveyor, or keeping of any of his Majesty's Castles, Forts, &c. If any of these Officers did from thenceforth bargain or sell any of the said Offices, or any Deputations of the same, or take any Money or Profit, or any Promise, Covenant, Bond, or Assurance, to have any Money or Reward for the same; the Person so bargaining or selling, or that should take any such Promise, Covenant, Bond, or Assurance, should not only forfeit his Estate, but also every Person so buying, giving, or assuring, be adjudged a disabled Person to have or enjoy the same Office, or Offices, Deputation, or Deputations &c. And that all such Bargains, Sales, Promises, Covenants, and Assurances, should be utterly void.

THAT any Person so purchasing was intended, by this ACT, to be disqualified from holding an Office so obtained, became an affirmed *Case* in the 13th Year of King *James* the 1st. Sir *Robert Vernon* being, by the King's Gift, Cofferer to the Household, and having the Receipt of a great yearly Sum of the King's Money, bargain'd and sold his said Office, and agreed to surrender it to the King, to the Intent that a fresh Grant might be made of the same to the Use of the Person so purchasing; and thereupon the said Purchaser was by the King's Appointment, admitted and sworn Cofferer. But it was resolv'd by the Lord Chancellor *EGERTON*, the Chief Justice, and other great Lawyers, to whom his Majesty refer'd for their Opinions in this Case, that the said Office was void by the Statute of *Edward* the 6th, and that the Gentleman, purchasing, was disabled from having, or taking the said Office, and that no *Non obstante* could dispense with this ACT to

enable the said Purchaser: And thereupon he was remov'd, and Sir *Marmaduke Darrel* sworn (by the King's Appointment) into his Place. And consonant to this by the Statute for Presentations to Livings, made in the 31st of Queen *Elizabeth*, an Incumbent, who should come in, by any corrupt Agreement, to a Benefice, was so absolutely disabled for ever after to be presented to that Church, that the King himself, to whom the Law gives the Title of Presentation in that Case, could not present him again to that Church. For the ACT being made for Suppression of *Simony*, and such corrupt Agreements, so binds the King in that Case, as he cannot present him whom the Law has disabled: For the Words of the ACT are, *He shall thereupon, and from thenceforth, be adjudg'd a disabled Person in Law to have or enjoy the same Benefice.*

I shall conclude this Part of my Discourse, with a short Observation, that the Sale of Places, which relate to the Administration of Justice, may, in the Persons purchasing, be termed a *Lay-Simony*; and is a Disqualification in the Eye of the Law: And that therefore, in the Case of the *Masters in Chancery*, tho' Custom has conniv'd at their coming in by a Price, yet this Induction is a Forfeiture of Place by the said Statute of *Edward the Sixth*. The Wisdom of our Parliament was so well aware of This, that in order to make *Evidence* of the *Masters*, in an *Impeachment* now depending, and oblige them to discover, without Prejudice to themselves, what Sums they have severally paid for their Places, a new ACT was found expedient to qualify them for such Discoveries, and by which all Penalties should be wav'd to them, that would otherwise have been incurred by the Statute of *Edward the Sixth*.

THIS Introductory Part has run out into such a Latitude, that the Compass of my Pamphlet now calls upon me to hasten to the Consideration of the *Justice* of PARLIAMENTS, on corrupt Ministers, in *Impeachments* and Bills of *Attainder*.

A late Discourse which calls itself, *An Enquiry into the Origin of Parliamentary Impeachments*, &c. takes Notice, that Impeachments by the Commons are but of modern Date, the Commons setting together with the Lords House till the Reign of Richard the 2d. and that the first, whom the Parliament undertook to proceed against, was *Hubert de Burgh*, Earl of *Kent*, and Lord Chief Justice of *England* in the Reign of *Henry* the 2d. who was sentenc'd to be degraded of his Nobility, and his Life to be in the King's Mercy. But this Author continues, *I don't apprehend that this was either by Impeachment or Attainder, but by an Order of the House upon their being fully convinced of the Earl's Guilt.*

WE do not find, indeed, that the Commons, strictly speaking, were Prosecutors against this Nobleman; But what very nearly amounts to the same, Nine *Articles of Accusation* were exhibited against him by the King, to which he was requir'd to answer; and that others likewise joyn'd in accusing him, is as certain: For, after Judgment was pronounced upon him, we are told, the King at the Instance of some Great Men, the Petition of the Prisoner and his Friends, and by the Permission of those that accused him, respited the Judgment, and restor'd him to his Hereditary Lands; yet so as he should answer to all his other Accusers, according to the Custom of the Kingdom; and his Chattels and his Body to remain at the Castle of *Divises*, under Bail, till he

he should be deliver'd by the *Commune Council* of the King, and of all the *Barons* his Keepers, and of all the *Great Men* of the Land: And if he either broke, or endeavour'd to break Prison, then the Judgment was to take Effect, and wheresoever, or by whomsoever, he should be found, he was to be used as an Out-law.

THIS Author, however, if he will not allow *Hubert de Burgh* to have been impeached, must certainly be mistaken in saying, that he was the *First* whom the *Parliament* undertook to proceed against. For the Tryal of Nobility by their Peers, was much more ancient, and it had been to this Author's purpose to have gone back for an Instance, at least as far as the CONQUEST. *Roger Fitz-Osborne*, Earl of *Hereford*, under Colour of solemnizing his Sister's Marriage in *Cambridgeshire*, assembled and conspired with several of the Nobles there, to depose *William* the Conqueror, who was then in *Normandy*, from his Kingdom of *England*. This Treason being reveal'd by one of the Conspirators, *Walter* Earl of *Huntingdon*, the Earl of *Hereford*, was apprehended by the Sheriff of *Worcestershire*, and was tried by his Peers, and found Guilty of the Treason *per Judicium Parium suorum*.

I say, therefore, this Author is certainly mistaken in Fact in that Assertion; and if he had remember'd the Tryal of my Lord *Cornwallis*, 31^o Car. 2^{di}, he would have seen that the Lord High Steward there inform the Lords, that Tryal by Peers was not created, but acknowledg'd by the GREAT-CHARTER; and was as antient as the *Saxon* Monarchy, as appear'd by the Tryal of Earl *Godwin*, Earl of *Kent*, who was try'd by *Earls* and *Barons*; and that it was probably introduc'd by the *ROMANS*, amongst whom, for a considerable Time, it was unlawful for any one to sit in Judgment upon a *Senator*, who was not himself a *Senator*.

As by the Laws of *England*, every Man is tried by a Jury of his *Equals*, every *Peer* of the Realm, except in a Case of *Præmunire*, or upon an *Appeal* for Murther, &c. brought at the Suit of the Party, is tryable by his Peers only. By a Peer of the Realm is intended by the Law a Lord of Parliament: For, as my Lord Coke explains it, only a Lord of Parliament of *England*, shall be tried by his Peers being Lords of Parliament; and neither Noblemen of any other Country, or others that are call'd Lords, and are no Lords of Parliament, are accounted Peers within the Statute. And a Nobleman, 'tis said, cannot wave his Tryal by his Peers, and put himself upon the Tryal of the Country, that is, of twelve Freeholders, the Statute of *Magna Charta* saying that he must be try'd *per Pares*.

As they have this Priviledge, on the one hand, of being judg'd by their own supream Assembly, so they are liable, on the other, for any Crime against the *Government* or *Mis-administration* in Office, to be call'd to Account by the Body of the Nation. For if any Lord of Parliament, spiritual or temporal, shall commit any *Oppression*, *Bribery*, *Extortion*, or the like, the *House of Commons*, being the General Inquisitors of the Realm, (coming out of all the Parts thereof) may examine the same; and if they find, by the Vote of their House, the Charge to be true, then they transmit the same to the *Lords* with the *Witnesses* and *Proofs*.

THERE are so many Circumstances of Awe and Reverence attending these two Great Courts of *Judicature*, the one as *Accusers*, the other as *Judges*, that I much question, whether a Peer, under the Suspicion of high Misdemeanours, would not be content to wave the Priviledge of *Peerage*, and submit willingly to be try'd by an *Inferior*

Inferior Jurisdiction. There the Greatness of his Quality, the Strength of his Wealth, and such other Regards, might have Influence on the Minds of the Jury, and help to turn aside an ugly Sentence: But these are of no Weight in that high Court, where he can neither bye off his *Prosecutors*, nor make his *Judges* partial. An Impeachment is therefore more dreadful, especially where the Parry impeached is conscious of any Guilt that must be prov'd against him, upon these Considerations; that an injur'd Nation are assembled in Body, and Resolution, to call him to Justice; and that this Judgment is depending before an Assembly, to whom the Prerogative of the Crown and the Right and Liberties of the Subject are equally dear, and who will not suffer the Dignity of their Body to be stain'd, by sheltering a Member that ought to fall the Sacrifice of their just Resentments. These Considerations, I say, must make the Impeachment of a Peer, (especially, One who knows he has been guilty of the Matters charg'd,) very dreadful to Him. And certainly, no small Shame and Confusion must attend such a Prosecution, when he considers, that his Crimes are display'd and aggravated, with all the Force of Oratory and Proof, before an Assembly, in which once, as a *publick Minister*, he bore Sway; and that the Vote of every Lord must be concurring to his Conviction, who before bow'd to the *Dignity* of his *Office*, and thought themselves happy to be favour'd with his Smiles.

I BELIEVE it may be determin'd, that (unless a Man have a Forehead proof against all Sentiments of Remorse or Ignominy) this Shame and Confusion are inseperable, even where a Peer is, only try'd by his Peers upon a *private Indictment* and not at the Complaint of the *Grand Inquest* of the

the Nation, the *House of Commons*. Upon the Tryal of the Earl of *Pembroke* for Murther, (30^{mo}. Car. 2^{di}.) the Lord High Steward acquainted his Lordship, That he was to be try'd in full Parliament, and not by a select Number of Lords; and therefore, That the being made a Spectacle to such an august Assembly, and having his Faults and Weaknesses expos'd, must be very mortifying to him.

BUT where a Peer is thus try'd, the Arguments and Evidence are confin'd to the single Proofs of the Facts laid in the *Indictment*; where he is call'd to an Account upon a *National Complaint*, the Charge is branch'd out into a number of Articles, and diversity of criminal Matter open'd, and inforc'd, under every seperate Charge; and this done by Prosecutors of no less Weight, than the Representatives, and collective Body of the whole Commonalty of the Land. My Lord *Strafford*, therefore, very justly, upon his Recapitulation of the Evidence on both Sides in his Tryal, said, that That which render'd the Charges against him most grievous to him, was, that they had the *Authority and Power* of the *House of Commons* to support them.

THERE are several other Circumstances, which seem to contribute no small Terrors to Tryals by *Impeachment*.

1st, BECAUSE, (as Mr. Attorney General *Prideaux* declar'd, upon the Tryal of *Christopher Love*, 3^{tio}. Car. 2^{di}.) in *Impeachments*, the Parliament are not ty'd up to those nice and formal Rules, as other inferior Courts upon *Indictments*.

2^{dly}, BECAUSE, (as Mr. *St. John* observ'd, upon the *Impeachment* of my Lord *Strafford*, (16th. Car. 1^{mo}.) in *England*, the same Law, which enabled inferior Courts to judge according to the

Laws already made, impower'd the *Parliament* to make new Laws.

3dly, BECAUSE, (as my Lord *Digby* observ'd, in the last mention'd Case;) the *Parliament* have both a *Judicial* Power and a *Legislative*; and that the Measure of One is what is legally Just; of the Other, what is prudentially and politically fit for the Good and Preservation of the whole.

4thly, BECAUSE, (as it was affirmed upon the Tryal of the Earl of *Essex*, 43^o *Elizabethæ*) the Person try'd cannot challenge any of his Peers.

And, 5thly, BECAUSE, as the Council argued (upon the Tryal of *Edward Fitzbarris*, Esq; 33^o *Car.* 2^{di}) In the Case of an *Indictment*, it is in the Power of the Prince to pardon; but in the Case of an *Impeachment*, they took it to be otherwise. And, consonant to this Opinion, (upon the *Impeachment* of the Earl of *Danby*, 30^o *Car.* 2^{di} and his pleading a Pardon from his Majesty in Bar to the said *Impeachment*) the Managers for the House of *Commons* insisted, that the setting up a Pardon to be a Bar to an *Impeachment*, defeated the whole Use and Effect of *Impeachments*; and till they had Right done them against such a Plea, they apprehended that the Justice of the Kingdom would be defeated by Pardons of the like Nature in other Cases. For that an *Impeachment* was virtually the Voice of the whole Kingdom, and it would be dangerous if the whole Nation should have Occasion ministred to them, to be apprehensive of the utmost Danger from the Crown, from whence they of Right expect Protection.

I do not take upon me to determine the Matter of Law upon this grand Question, how far the King's Pardon can be effectual or pleadable against

a Prosecution by the *Commons*; but I may make bold to give it as my private Opinion, that it seems very derogatory to the high Dignity of a Peer, and implies an Acknowledgment of his Crimes, to lay hold of such an Advantage, rather than to have the Honour of his Name and Family justified before the Lords his Judges. And it is very observable, what Mr. Justice *Jones* said upon my Lord *Danby's* Case, That the Earl had been charg'd by an Impeachment, and had pleaded a Pardon to the Impeachment before the Lords, *which Plea he took to be a tacit Confession of Guilt in Law, tho' the Party were never so Innocent.*

So likewise Mr. *Steel* in his Argument for the Commonwealth, and Reply to the Duke of *Hamilton's* Defence upon his Tryal, in 1648; asserted from *STAMFORD'S Prerogative of the Crown*, that a Plea of *Pardon* implied a *Confession* of the Fact, if not made out, and prov'd fatal and final to the Party.

If therefore it carries with it a *Confession* of Guilt, I cannot think but that, in a Noble Peer, to shelter under Such a Refuge, would be scandalously mean and unworthy of his Dignity. There are a sort of Creatures in Life that would think *prudential Safety*, even so purchas'd, both *wise* and *justifiable*; tho' attended with the Loss of Honour, and downright *Ignominy*. But I should look upon a Peer, that took Umbrage from a *Pardon*, or *Act of Indemnity*, tho' to decline a Prosecution by which even his Life might be affected, to be upon the same base Footing with Him, that pleads the *Statute of Limitation* in Avoidance of a just Debt. It is in this respect, at least, a parallel Case; that a corrupt Minister, who has by the Abuse of Office transgress'd the Laws, as much owes his Life to his injur'd Country, when

the Justice of the Nation thinks fit to demand it ; as the Other, who runs in Debt with his Fellow-Subject, is in Conscience liable to his Creditor's Action ; tho', in a foolish Forbearance, he does not bring it, till he is improper in Time to maintain it. Such a Plea therefore is a mean and dishonest Subterfuge, and the Party escaping thro' the Advantage of it, survives at best with Dishonour. It is submitting to Life on Terms, on which a generous Man ought to be asham'd to hold his Life ; and as JUVENAL expresses it,

— *Propter Vitam, vivendi perdere Causam.*

IN short, all Pleas of Pardon ought to meet with the utmost Discouragement upon this Maxim, that *Spes Impunitatis continuum Affectum tribuit delinquendi, & Venia facilitas incentivum est delinquendi.* The Hopes of Impunity give a continual Itch and Provocation to Offend ; and the Easiness of obtaining a Pardon is a Whet and Invitation to Transgression. And, certainly, no Pardons of the Crown are so obnoxious, as where by Them Restitution to the Subject is stopt and denied. And, indeed, by the antient and constant Rule of Law, as BRACTON lays it down to us, *Non poterit Rex facere Gratiam cum Injuriâ & Damno Aliorum ; quod autem alienum est, dare non potest per suam Gratiam.* By an Act in the Reigns of King William and Queen Mary, it is expressly declar'd, That no Pardon under the Great Seal shall be of any Force against an Impeachment by the Commons. I think, it is pity an Act of Grace should be any more available than the Other ; only it is to be alledged, that This is the ACT of the Three great States of the Kingdom in Concurrence.

As I have above mentioned the Case of the Earl of DANBY, who pleaded the King's Pardon,
upon

upon his Impeachment, but could not have it allow'd; so I now recollect another Instance, and that was in the Case of *Archbishop LAUD*, of a Pardon from the King to stop his Sentence, but rejected by the *Commons*. I mention This only in Order to observe, to the immortal Credit of this worthy Prelate, that tho' he had sufficient Interest with his Royal Master, to have obtain'd that Pardon time enough to have pleaded it in Bar to his *Impeachment*; he chose rather to have his Character stand the Test of a Tryal, than to have heavy Charges stand upon Record against him to latest Posterity, which, unanswer'd, would have all been deem'd, by the Prejudice of his Enemies, incapable of an Answer; and he knew too, to use his own Words, "that if nothing but " Truth were spoken, he challeng'd whatever " was between Heaven and Hell, to say their " worst of him". But the same partial, *fanatic*, Wretches, who then made up the House of *Commons*, as they over-rul'd his Defence with *Virulence*, so they afterwards rejected the King's Pardon with suitable *Insolence*. It may seem to Some surprizing, that the Lords should concur to the Ordinance drawn up for the *Attainder* of this Bishop; but, in Justification of that Noble Assembly, I think it proper to observe, that the *Commons* threaten'd them by Message, They would do well to agree to the Ordinance, or else the Multitude would come down, and force them to it; they were likewise threaten'd to be displac'd from all those Places of Power and Command they had in the Army; and lastly, a Project was form'd, and a Mob drawn down to strengthen it with Petitions, that the *Lords* would please to vote and sit with the *Commons*.

BUT I have here done with all I intended to say either with Respect to the Bishop, or those
 Consi-

Considerations which seem to have the greatest Weight against, and to throw Hardships on, Tryals by Impeachment: I now come to consider them in a different Light, and to shew by Arguments of another Complection, that Tryals by *Impeachment* must be more *just* and *impartial* than Those of an *Inferiour Jurisdiction* in any Court whatsoever.

1st, BECAUSE the *Prosecutors* upon an Impeachment have neither *personal Malice*, nor *personal Interest*, to satisfy; too often the Motives of Inferior Prosecutions. They are only the Agents for an *injur'd Nation* to demand Justice upon an *offending Minister*; and to present the *Complaint* and prepare the *Proofs*, in order to his Conviction; and all they can get by the Consequence of the Tryal, is, the Satisfaction of doing their Country Justice, and bringing a Transgressor of its Laws to Punishment. They have no Spleen against the Party prosecuted; but are only zealous to have the Laws asserted, and the Dignity of the Crown preserv'd: For as Mr. Pym, in his Reply to the Earl of *Strafford*, observ'd, "It cannot be for the *Honour* of the King, that his *sacred Authority* should be used in the Practise of *Injustice* and *Oppression*". However vehement therefore they are in the Maintenance of their Charge, and giving the Evidence its due Force and Strength, that Task once absolv'd, all Heat and Resentment vanishes, and they demand Justice with Temper and Calmness. So was their Duty finely describ'd by my Lord *Digby*, in his Arguments against a Bill of Attainder passing upon my Lord *Strafford*, "That it was honest and noble to be earnest in order to the Discovery of Truth, but when That was brought to Light, their Judgment thereupon ought to be calm and cautious; and, upon Proof, they ought

"ought to condemn with Innocence, whom they
 "prosecute with Earnestness".

I cannot help inserting in this Place (for tho' it
 be a Digression, it is apposite to the Subject) a
 remarkable Observation of my Lord Chief Justice
 COKE, that the Parliament being call'd *commune
 Concilium*, every Member of the House being a
 Counsellor, should have three Properties of the
 Elephant; first, that he hath no Gall; secondly,
 that he is *inflexible* and cannot bow; thirdly, that
 he is of a most *ripe* and *perfect* Memory: Which
 Properties ought to be in every Member of the
 great Council of Parliament. *First*, to be with-
 out Gall; that is, without Malice, Rancour, Heat,
 and Envy. *In Elephantine Melancholia transit in
 Nutrimentum Corporis*: Every gallish Inclination,
 if any were, should tend to the Good of the
 whole Body, the Commonwealth. *Secondly*, that
 he be constant, inflexible, and not to be bow'd,
 or turn'd from the Right, either for Fear, Reward,
 or Favour; nor in Judgment respect any Person.
Thirdly, of a ripe Memory, that they remem-
 bring Perils past, might prevent Dangers to come;
 Whereunto we will add two other Properties of
 the Elephant, the One, that tho' they be *maxime
 Virtutis & maximi Intellectus*, of greatest Strength
 and Understanding, *tamen gregatim semper ince-
 dunt*, yet they are sociable and go in Companies;
 for, *Animalia gregalia non sunt nociva, sed anima-
 lia solivaga sunt nociva*; Sociable Creatures that
 go in Flocks, or Herds, are not hurtful, as Deer,
 Sheep, &c. but Beasts that walk solely, or singu-
 larly, as Bears, Foxes, &c. are dangerous and
 hurtful. The Other, that the Elephant is *Phi-
 lanthropos*, & *homini erranti viam ostendit*, He is
 a Lover of Mankind, and shews him that is in
 an Error, the right Way. And these Properties
 ought every Parliament Man to have.

BUT

But to return to those Arguments, which support the Justice and Impartiality of Tryals by Impeachment, we have the strongest Reasons to think them so,

BECAUSE, 2dly, they derive no small Advantage from the Characters of the *Lords*, who are the *Judges*. For that august House is of such Dignity, that the Party impeached may with the greatest Security rely upon their Lordship's Candour and Readiness to acquit him, if he is innocent; so the Nation may have that Confidence in their Fidelity and Justice, that they will not by reason of the Prisoner's Quality and Nearness to them, as being a Peer, acquit him, if he shall appear to be guilty.

3dly, BECAUSE they are neither to be *brib'd* to Partiality, as *Juries* are too commonly known to have been; nor *aw'd*, or *influenc'd*, contrary to their Judgment, by the *Directions*, *Eloquence*, or *Insinuations* of the Prosecutors. For as the Lord *Finch* told the Lord Viscount *Stafford* upon his Tryal, 32^o Car. 2^{di}. "As he was to be try'd by
" the whole Body of Peers, the noblest Court in
" the Christian World; that, there, the Ballance
" would be exactly kept, and all due Allowan-
" ces made that the Case would bear". So the Lord High Steward told the Lord *Warwick*, upon his Tryal for the Murther of Captain *Coot*,
" That tho' 'twas a great Misfortune to be accu-
" sed of so heinous a Crime, and an Addition to
" it, to be brought to answer as a Criminal be-
" fore such an august Assembly, yet it ought to
" be a Support to his Mind, and was sufficient
" to keep him from sinking under the Weight of
" such an Accusation, that he was to be try'd
" before so noble, discerning, and equal Judges;
" so that nothing, but his own Guilt, could hurt
" him". And again, to mention but one Instance
more

more, (upon the Tryal of the Earl of *Pembroke*, likewise for Murther, as I have observed in a foregoing Sheet;) the Lord High Steward addressing himself to the Prisoner, acquainted Him, " That tho' the being made a Spectacle to such
 " an august Assembly, and having his Faults
 " and Weaknesses expos'd, must be very mortifying; It must be a Support to him to consider that their Lordships thought themselves
 " bound in Honour to be Council for him in
 " Matters of Law; and that tho' there were
 " Council to plead against him, no Skill or Arguments could pervert their Lordships Justice:
 " He should not fall by the Charms of Eloquence, or be depress'd by any thing but the
 " Burthen of his Crime, and even as to That all
 " candid Allowances would be made.

4thly, BECAUSE tho' the *Parliament* have a *Legislative* Capacity, yet in their *Judicial* they act according to the known Laws of the Realm. And so it was observed by the Council in *Fitzharris's* Case, above quoted, That in the *Legislative* Part, and Matters of *Privilege*, both Houses proceed only *Secundum Legem & Consuetudinem Parliamenti*, but as to the *Judicial* Part, they have always been guided by the Statutes and known Laws of the Land; there not being one Law in *Westminster-Hall*, as to Matters of Judgment, and another in the Court of the *Lords* above. And my Lord *Digby*, likewise, in his Argument against the Attainder passing upon my Lord *Strafford*, took Notice, That the *Parliament* having a judicial Power, and a Legislative, and the Measure of the One being what was legally just; and the Other, what was prudentially and politically fit; yet that these were not to be confounded in Judgment, nor must they piece up want of Legality with Matter of Convenience.

AND, 5tly, Because the Nature of the *Proofs*, required before them, does not admit of any *Doubt* or *Uncertainty*: But, as the Lord High Steward observ'd to the Earl of *Pembroke* upon his Trial, Nothing but plain and positive Proof, and such as deserv'd to be call'd Evidence, would be receiv'd against him. For this Reason, a *Peer*, when he is try'd for *Treason*, *Misprision of Treason*, &c. before a Number of his Peers, and pleads *Not Guilty*, can have no Council assign'd him, or allowed him, to answer the King's Council, nor to defend him. Not because it concerneth Matter of Fact, (as my Lord COKE affirms) for *Ex facto oritur jus*: But the true Reasons of the Law in this Case are, *First*, that the Testimonies and the Proofs of the Offence ought to be so clear and manifest, as there can be no Defence of it. *Secondly*, the Court ought to be instead of Council for the Prisoner, to see that nothing be urg'd against him contrary to Law and Right: Nay, and any learned Man, that is present, may inform the Court for the Benefit of the Prisoner, of any Thing that may make the Proceedings erroneous. And when any *Peer* is brought to the Bar to be thus try'd, and the Lords, his Judges, seated in their Places, the High Steward declares to the Prisoner the Cause of their Assembly, and perswades him to answer without Fear, that he shall be heard with Patience, and that Justice should be done; and he likewise gives a Charge to the Peers, exhorting them to try the Prisoner indifferently according to their Evidence.

I have mention'd it as one *Objection* to the *Impartiality* of Tryals by *Impeachment*, that the Lord impeach'd cannot challenge any of his Peers; as a Commoner may the Persons impanell'd for his Jury; and therefore I think a proper Occasion offers it self here for an *Answer* to the *Objection*.

tion. They, who imagine this Restriction an Hardship, must found their Opinion on this Supposition, that the Lord impeached cannot have carried himself so evenly, especially if he has been a *Publick Minister*, or *Officer of State*, but that either by *Overbearing* in his *Office*, by *Denial* of some *Suit*, or by *Opposition of Principle* in his *Politicks*, he may, possibly, have given strong Offence to some of his Judges: And that they, out of Resentment, and a Desire to retaliate the Injury, may let their *Prejudice* get the better of their *Judgment*. But Suppositions of this kind, with Me, stand in some Degree of *Scandalum Magnatum*. We must, and ought to think, That Noble Body are of such Dignity and unbyass'd Integrity, that they cannot harbour Sentiments of grov'ling *Malice*, or be actuated with Passions that make even the Vulgar yet *more base* and *despicable*. They are upon their *Honour*, and upon their *Allegiance*, to pronounce according to *Conscience*; and to be influenc'd and directed by a mean Grudge, or Resentment, is incompatible with those Tyes, and their high Rank and Nobility. This therefore being admitted, there remains no Reason, why a Peer should have the Priviledge of challenging any of his Peers.

AND, upon the same just Presumption of their Honour and Integrity, they are not restrain'd to those strict Forms and Niceties, by which the Juries of inferior Courts are bound. For upon the Tryal of a Peer in full Parliament, the Lords, the Judges, after the *Evidence* open'd, and before the Prisoner has gone thro' his *Defence*, have been known to adjourn themselves; nay, and for diverse Days, and the Evidence been given in Parcels. But where a Lord has been tried out of Parliament, and only before a Number of his Peers, upon a Trial of that Sort it has been de-

termin'd, that the Court, tho' of a higher Degree, was of the same Nature with the ordinary Courts of *Judicature*; in which, after Evidence given, the *Jury* cannot be adjourn'd, but must proceed in their Enquiry, till they are agreed on their Verdict. This, indeed, has been a controverted Point too; but the Judges meeting with no Precedent, and it being a new Case, gave their Opinions doubtfully, and submitted them to the Judgment of the High Steward. In the Trial of the Lord *Delamere*, I remember, (*Anno 1^{mo} Jac. 2^{di}*.) a Question being put, upon the Request of the Prisoner, whether the Tryers might adjourn before the Prisoner had made his Defence, and they were agreed in their Verdict, and the Opinion of the Judges being requir'd upon it, the Lord Chief Justice *Herbert* deliver'd himself to this Effect:

“ That where the Trial is by a Jury in an inferior Court, there the Law is clear; the Jury once charg'd, can never be discharg'd till they have given their Verdict: and the Reason of that Case is, for Fear of Corruption and tampering with the Jury. But that this Reason fail'd in the Case of the Lord *Delamere*; because the Lords, that are to try a Peer, are Persons of that great Integrity and Honour, that there is not the least Presumption of their being to be prevail'd upon, any such Way. And for that Reason, because of the Confidence which the Law reposes in Persons of their Quality, they are not sworn as common Jurors are, but are charg'd, and deliver their Judgment upon Honour. ” And therefore the Sentence by them, as my Lord *Coke* informs us, is call'd *Judicium Parium*, and not *Verdictum*, because the Noblemen charg'd are not sworn, but give their Judgment upon their Honour, and Allegiance to the King.

I must not omit one Argument, and That not of the least Weight and Consequence, why a Tryal by Peers must be preferable to any interior Jurisdiction; which is, because the Generality of that august Body are read in the Laws of Nations as well as of their own Country; and consequently, are proper Judges of Matters of Law, as well as of Facts: And to this, their Discernment and Understanding are, beyond Comparison, superior to common Juries.

I dare say it may be asserted, and I am sure it lies open to the Observation of any that are conversant with State-Tryals, that the Ignorance of Juries, in all Reigns, has been wrought upon and influenc'd by the Vehemence and eloquent Harangues of an Attorney General, and by the Directions of the Judge in summing up the Evidence; where they have thought it the Duty, and Interest, of their Place, to strain every Point in Favour of the Crown, and to the certain Conviction of the Prisoner. To the great Reproach of our Country, in some discontented Times, we have not wanted petulant and froward Judges, uneasy to the Bar, and insolent to the Prisoners brought before them; and, withal, Persons of that Flexibility and unhappy Principle, that the Subject has been too often sacrific'd to their Passion, and Desire to please a Court-Faction. When ever this has happen'd, we may safely pronounce it downright Iniquity: For it cannot be call'd a Crime of Ignorance, but of an unwarrantable and illegal Compliance. The first would be a sufficient Misfortune to a Country, that the Direction of a Court of Justice should be in such unknowing Hands: But a Conduct of the latter Sort deserves a Censure, for which we can hardly find too bad a Name. My Lord Chief Justice COKE, (of whom it has been observ'd, that he was a very different Man,

Man, when a Judge, from what he was when an Attorney-General and Prosecutor for the King) has left us the following fine Definition of what a Judge ought to be in the two great Respects of Knowledge, and Integrity. *Judex debet habere duos Sales, viz. Salem Scientiæ, nè sit insipidus; & Salem Conscientiæ, nè sit Diabolus.* Every Judge, says he, ought to have two Sorts of Salt in him; the Salt of Knowledge, that he appear not a Fool; and the Salt of Conscience, that he appear not a Devil. A Rule that ought to be of eternal Direction to Princes, in their Choice of these great Officers; since their Trust is of such Latitude and Consequence; and since the *Salus Populi* is so deeply concern'd in their faithful Administration, and Discharge of it!

LEAST Some should have Suspicions, that what I have here said concerning Judges, be rather intended as an Odium and Scandal on the Robe, than a natural Reflection arising from what has actually been our Case, I think it proper to take Notice on this Occasion, that One of the Motives for the famous *declaratory* Statute of Treasons, made 25^o Edw. 3th. was the Corruption and arbitrary Conduct of the Judges in the Inferior Courts. " For, (as a very learned Author informs Us, in a Treatise, wrote but few Years since, call'd, *A Discourse concerning Treasons and Bills of Attainder;*) " before this Statute of Treason made, the Ad- " judication of those particular Actions which " should be punish'd as treasonable, was altoge- " ther in the Cognizance of the ordinary Courts " of Justice; and, for want of fix'd Rules, al- " most discretionary in the Judges, and They " being absolutely in the Power of the Crown, " the Preservation of their Places inspired them " with a wonderful Zeal to punish all such Crimes as " Treason, which particularly affected the Prince,

“ as distinct from the Publick, &c. &c. And it is
 “ improbable, but that the Judges, to improve their
 “ Interest at Court, did very often adjudge a Case
 “ to be Treason, (which they ought not in strict
 “ Justice to have done) in Order to secure a consi-
 “ derable Forfeiture to the Crown, satisfying their
 “ Consciences with this Consideration, that if a Man
 “ must be hang’d, it matter’d not much, whether it
 “ was for Treason or Felony.

I have gone thro’ all the Considerations, that I
 intended, with relation to the Justice and Impar-
 tiality of Tryals by Impeachment; and I shall
 only subjoin one Observation, that there are Cases,
 in which they are absolutely necessary; as Ministers
 of State and other Great Men, may commit some
 Crimes, upon which Statutes and Inferior Courts
 would not be able to reach them; and yet they
 ought, notwithstanding, to be punish’d: It being
 a most infallible Maxim, (as the Author, whom I
 last quoted, observes in the same Discourse) That
 in a Country where Nothing is punish’d, Every
 Thing will be attempted. For it is Nonsense to
 talk of Laws and Constitution, if any Man may
 commit what is notoriously most prejudicial to
 his Country, and yet escape with Impunity, by
 screening himself behind Formalities. Where,
 therefore, any Delinquents are too big and potent
 for the common Processes of Justice, there ought
 to be a Resource to the Supreme Power of Parlia-
 ment, who have their Jurisdiction over every
 One, who stands in the Degree of a Subject.

I come now to speak of another Branch of this
 Discourse propos’d, viz. ATTAINDERS; but I
 cannot say that I think them so frequently ne-
 cessary, or that half so many Arguments can be
 rais’d to support and countenance the Use of them.
 They are, indeed, a Power, as has been said, like
 Thunder and Vengeance in the Hands of Provi-
 dence,

dence, and not to be employ'd but upon extraordinary Occasions, and which then ought not to fail. For Men would trifle, and despise that Power, that was not able effectually to exert itself.

BILLS of *Attainder*, I think, have been defin'd to be *Parliamentary Judgments*, whereby the supreme *Legislative* Power of the Nation exempts the Particular Case of a notorious Criminal from those Courts, and from those Rules, which are appointed for the Tryal of the Generality of Cases, and inflicts a Punishment upon him adequate to the Crime they are convinc'd he is guilty of.

THE strongest Reasons, that have been alledg'd for the *Necessity* and *Practise* of them, seem to be,

WHEN the Government is under an imminent Danger, and cannot otherwise be rescued ; because such Cases of Treason as are not so clear, but depend upon Constructions and necessary Inferences, might be too dangerous to trust with any Power inferior to That of the Parliament.

WHEN the *Offenders* are so *big*, that they cannot otherwise be brought to Justice ; so that, by their Aid, Persons might be deterr'd from Practises against the Crown, in Hopes of escaping Punishment, if they could elude the Justice of Inferior Courts.

AND when the Crimes committed are shelter'd from the Law, and do not come under the Denomination of it. In this Case, Attainders are to supply the Deficiencies of the *Statute-Law*; as it is not possible that any Legislature whatever should be able in a present Case to provide against all future Contingencies. For such monstrous Crimes are sometimes committed, as are not provided against, because the Government did not imagine Mankind to be capable of Them. In which Cases,
Parlia-

Parliaments have not always thought themselves oblig'd to make a Law first, but to make the first Criminal an Example. And that then Forms of Law, and Niceties in the Proofs of Facts, which they all experimentally knew to be true, ought not to hinder them from doing themselves that Justice which every injur'd People had a Right to exact, and which was absolutely necessary to preserve a Nation.

It has been likewise urg'd, that there is no Country, in which there is not a Power lodg'd in the Government, to be exerted upon extraordinary Occasions, beyond the legal way of Prosecutions. That such an extraordinary Case, as requir'd a Government to dispense with Forms, and come to an extraordinary Manner of Proceeding, might be supported by the Necessity of it. That where a Government was at Stake, and nothing would preserve it, but the breaking thro' settled Forms; that there a Government did, and always would, break thro' them, whatever Rules were prescribed.

THAT tho' ill Consequences should be dreaded from *Attainders* in a *future* Reign, yet that the *immediate* Care of preserving the *Constitution* in present, ought to *supercede* those *distant Apprehensions*.

AND, Lastly, that it has been the Wisdom of all Ages to make Laws to punish such, as by their Artifice would evade the Law: For if a Crime, committed against the Body of a Nation, should go unpunish'd, because the Offender could not be come at in the ordinary Course, That Nation would be in a dangerous Condition.

It must be own'd, some of these Arguments, at least, wear such a plausible Colour, that in particular Cases they make *Attainders* look necessary and unavoidable: But if there are others

to be brought in Opposition, of such a deadly Cast, as quite to take off and overcome the Gloss of these, we ought to conclude, as *Cassius* does in *Julius Caesar*, that good Reasons must give way to better. And, if I am not mistaken, such forcible Objections have been rais'd in Discountenance of them, as ought to make every *Ministry* apprehensive how they bring them into Practice.

It was observ'd, I remember, by *Sir Edward Seymour*, in the Proceedings against *Sir John Fenwick*, that most of the *Attainders* which had been produc'd as *Precedents* for them, had been revers'd; and that because the Persons condemn'd had not the due Benefit of the Law; what therefore was a good Reason for reversing such *Attainders*, was also a good Reason why they should not proceed by *Attainder*. And as *Sir Thomas Powis* took Notice, on the same Side of the Question, After the *RESTORATION*, it appear'd by the *ACT* of *Reversal* of the *Attainder* of the *Earl of Strafford*, that That Parliament look'd upon those Proceedings as evil and unjust, and order'd them to be taken off the File, or otherways defac'd and obliterated, that they might not be visible to after Ages, or brought into Example to the Prejudice of any Person whatsoever.

It has been urg'd too that Parliaments ought not, in order to punish a few Criminals, tho' of the deepest Guilt, to make such *Precedents*, as might be of perpetual Prejudice to the Liberties of their Country. For that it might fall out by Virtue of a Precedent, an innocent Man might suffer; and they who made this Precedent, would then, in some sort, be accessory to his Blood. And some *Precedents* had been, that had been made very unanimously, which in bad Times had been turn'd to shed the best Blood in *England*.

THAT They, who are intrusted with the Lives and Liberties of the People, as they ought to do nothing to the *Detriment* of the King, because upon Him and his Government the publick Safety depends: So they ought to do nothing for the King, that may turn to the *Detriment* and *Hazard* of the People.

THAT when a Parliament are *judicially* trying a Man for his Life, it is conceiv'd, they ought to proceed *secundum allegata & probata*: But, in the Case of a Bill of Attainder pass'd, it has been affirm'd, that private Satisfaction to each Man's Conscience was sufficient to attain the Criminal, altho' no Evidence was given at all. But a very *Noble Lord*, who was then but a *Commoner*, upon the Debates in Sir *John Fenwick's* Case, very strenuously asserted, that the greater the Crime was, the clearer the Proof ought to be; and he thought it was no Argument, because they could repeal *Magna Charta*, and all subsequent Laws, that therefore they ought to do it.

SOME *Attainders*, and with great Justice, have likewise been arraign'd, because the Persons sentenc'd by the Bill were forthcoming, and ready to take their Tryals in the ordinary Methods of Justice; it being the Honour of our Government, that the meanest Subject is intitled to a Tryal by a Jury. And even the *Regicides*, who had actually murder'd the King, yet did not fly the Realm, were admitted to this Tryal in the ordinary Courts of Justice, tho' a Bill of Attainder pass'd against those who fled. For tho' some Few Attainders have pass'd against Persons who were forthcoming; yet they have never been mentioned without heavy Censures, and great Complaints against them. And our Parliaments have been so far from depriving the Subject of their ordinary Trials, that it was enacted in the Reign

of *Edward* the 6th, that Persons, outlaw'd for Treasons, should be admitted to their Tryals, where they return'd within the Year and claim'd their Priviledge.

I cannot dismiss this important Objection, without subjoyning the Opinion of my Lord COKE, which is very strong and express upon the Case. " Albeit, says He, I find an Attainder by Parliament of a Subject of High Treason being committed to the Tower, and forthcoming to be heard, (viz.) *Thomas Cromwell*, Earl of *Essex*, 32^o *Henry* 8^{vi} and yet never call'd to answer in any of the Houses of Parliament; altho' I question not the Power of the Parliament, for, without Question, the Attainder standeth of force in Law: Yet this I say of the Manner of the Proceeding; *Auferat obliuio, si potest; si non, utcunq; silentium tegat*; Let Oblivion wipe away the Memory of it, if possible: But if that can't be, let Silence, however, cover it. For the more high and absolute the Jurisdiction of the Court is, the more just and honourable it ought to be in the Proceeding, and to give Example of Justice to inferior Court's." He afterwards recites the Case and Circumstances of that Attainder, and then concludes with this Inference: " The Rehearsal of the said Attainder can work no Prejudice, for that I am confidently perswaded, such honourable and worthy Members shall be from time to time of both Houses of Parliament, as never any such Attainder, where the Party is forth-coming, shall be had hereafter without hearing of him."

MY Lord COKE, in this Instance, with Reason brands the Parliament for attainting a Peer, whom they had in Custody, and might regularly have call'd to an Answer: A Proceeding bad enough, indeed, to warrant that Censure which

he puts upon it. But how much more illegally did a Parliament in King *Richard 2d's* Reign act against an Archbishop of *Canterbury*? For Sir *John Busby*, Speaker of the House of Commons, accus'd him in their Names of High-Treason; and tho' this Prelate was then actually sitting in the House of Peers, and next to the King, and rose up to reply to the Charge, the Speaker mov'd, *That he might not be admitted to answer, least by his great Wit and Cunning, he might draw Many over to his Side*: Whereupon the Archbishop was constrain'd to keep Silence, and condemn'd to perpetual Banishment. A Sentence no less Arbitrary in the Proceedings, than it was fatal in the Consequences! which occasion'd Sir *Richard Baker*, our Historian, to make the following political Remark. It was a Custom, in those Days, to punish the Delinquencies of Great Men by Banishment out of the Realm, a Custom not more grievous to the Subject, than dangerous to the Prince: for by this Course they had Means to work so closely in their Minds of Revenge, that the Fabrick of a Kingdom was in danger to be blown up before their Working could be perceiv'd. An Example whereof was never more plainly seen than at that time, in the Archbishop of *Canterbury*, and the Duke of *Hereford*: For they in their Banishment meeting often together, and aggravating the Grievances of King *Richard's* Government, fell at last to consult by what Means he might best be remov'd, seeing there was no Hope he could ever be reclaim'd.

BUT to quit at once this Digression, and with it all further Remarks on the Subject of *Attainders*, I come now to take a short Review of the several Lord CHANCELLERS, from the Conquest down to our own Times, who have been so unfortunate to incur the Prosecution of *Impeachments*; or who have

have fall'n Sacrifices either to the Resentment of the *Commons*, or the Dislike and Prejudice of their *Sovereigns*. For in earlier Times, the Prince often, without the Instigation of a National Complaint, order'd his *Ministers* not only to be dismiss'd, but question'd.

THE first *Chancellor* whom I can find since the *Conquest*, to have met with any Disturbance from the Secular Powers, (not that there are any Traces of an Impeachment against him, tho' 'tis certain there were Accusations ;) was the famous *Thomas à Becket*, in the Reign of King *Henry* the Second. It is observ'd of this haughty Prelate, that as soon as he was constituted Archbishop of *Canterbury*, he withdrew himself from the King's Obedience and Service, and contradicted him in many Things. This Conduct, and the Instigation of the Clergy and military Men of the Kingdom, who possess'd the King of the Danger of the Archbishop's Power, first turn'd the Stream of the Royal Favour against him. Another Incident, which help'd to unhinge him, was This : The King, having been before angry with the Clergy, and provok'd at their Insolency and flagitious Actions, demanded of the Archbishop, that, by the Consent of Him and his Fellow-Bishops, all such Clerks as were taken in great Crimes, should be degraded, and be delivered up to the King's Courts to be corporally punish'd, and not have any Protection from the Church : But the Archbishop was obstinate to stand out against this Branch of Prerogative ; would observe the Royal Customs or Laws no further than with a *Salvo* to his Sacerdotal Jurisdiction ; and asserted peremptorily, (if not, wickedly) *That should an Angel come from Heaven, and advise him to make a more absolute Acknowledgment, he would curse him.* The King, on the other hand, was as zealous for the
Peace

Peace of his People, as the Prelate was for the Liberties of the Clergy; so that Every Day furnish'd new Matter for Displeasure betwixt them. He was in Parliament call'd to an Account for the Sum of thirty thousand Pounds of the King's Money, which he had receiv'd whilst *Chancellor*; for which he pretended he had formerly accounted, and been acquitted before the Barons of the *Exchequer*: And afterwards, upon some high Aggravations in Behaviour, the King in a great Rage commanded his Peers to sit in Judgment upon him as a perjur'd Traytor. The Sentence was pronounc'd accordingly, and the Archbishop appeal'd from it to the See of *Rome*; but he, notwithstanding, thought it his safest Course, under a disguise in Habit, and a borrow'd Name, to steal out of the King's Dominions. He was no sooner gone, but King *Henry*, that he might leave no Part of Resentment unfinish'd, dispatch'd the Bishop of *London*, and Earl of *Arundel* to the *French* King, urging him not to harbour one who had fled as a Traytor. To This, he banish'd out of *England*, and all his Dominions, all Men and Women that he could find which were akin to the Archbishop; and hearing that he was harbour'd at *Pontigny* in an Abby of *Cistercian* Fryers, the King sent to the Abbat, That if he shelter'd any longer the Archbishop of *Canterbury* in his Monastery, he would banish all the Monks of his Order out of *England*.

THE next *Chancellor*, whom I can find to have met with any Disturbance, was likewise a Bishop, *William Longshampe*, in the Reign of *Richard* the First. He was a Man of a haughty and imperious Temper, and injurious to all Sorts of Men. His Insolence in governing was such, that even when the Things he did were most justifiable, yet the Pride with which he did them was unsufferable.

So

So that when King *Richard* went upon his Expedition to the Holy Wars, Earl *John*, his Brother, who could ill brook the *Chancellor's* Behaviour, summon'd him to appear in the *King's-Court*, which however he thought fit to disobey. Earl *John*, and the Bishops, upon This consulted before a great Audience of the Citizens of *London*; What they should do with that Chancellor, who had so troubled the Kingdom, and would not stand to Law. Soon after the said Earl, the Archbishop of *Rouen*, the Bishops, Earls, Barons, and Citizens met and accused the Chancellor of many high *Misdemeanors*; and particularly, that tho' many Others were join'd with him in Commission of the *Regency*, he despis'd their Advice, manag'd all the Business of the Kingdom by Violence, and according to his own Will. Hereupon he was by the general Consent depos'd; clap'd up into Confinement; and then the other Justiciaries sent over one Common Letter to the King, acquainting Him, That his Chancellor had destroy'd the Kingdom and his Treasure; and therefore had been put out of his Office by the *Common-Council* of the Kingdom. (The Imprisonment of this Bishop may look somewhat arbitrary, as he was charg'd only with high *Misdemeanors*; but it is to be consider'd, he was likewise a Disturber of the Publick Peace. In the Case of Archbishop *SANCROFT*, I remember, it was objected to the Legality of his Commitment, because a *Peer* ought not to be committed for *Misdemeanors*; but it was then declar'd, that in Case of *Treason*, *Felony*, or a *Breach* of the *Peace*, the Peers have not such a Priviledge.) The Bishop's Imprisonment, indeed, was but short; and upon his Release, either knowing, or apprehending himself to be too weak for his Enemies, he thought it his best way to fly the Realm. For
Fear

Fear of Prevention, and for his greater Safety, he disguis'd himself in Women's Apparel, and carrying a Web of Cloth under his Arm, sought in that manner to take Shipping and pass the Sea. But being discover'd and known, the Women in Revenge of the Abuse done to their Cloaths, in making them his Instruments of Fraud, fell upon him, and so beat him, that, as my Author observes, it might have beaten Humility into him for ever after. He made his way, however, into *Normandy*, and all I have remarkable to add concerning this proud Man, is, that tho' Earl *John*, afterwards, for 500 l. having promis'd to restore the Chancellor to his Office, sent for him back into *England*, and try'd to induce the Great Men to consent to it; they would not come into the dishonourable Scheme, but sent him Word that unless he departed the Kingdom, they would imprison him. *A Virtue, which all Times ought to imitate, never to restore a Creature into Office, who had once been dismiss'd with disgrace.*

THE next Instance that I meet of a Chancellor fall'n under Parliamentary Resentments, is That of *Michael de la Poole*, Earl of *Suffolk*, in the Reign of King *Richard* the Second. He is represented in History as a Court-Flatterer, and an Instrument to set the King at Variance with his People; and being high in the Royal Favour, he made such enormous Incroachments, that when the King came to demand a Subsidy from the Parliament towards his Wars, he met with this Answer, *That he needed no Subsidy from his Subjects, if he would but call in the Debts which the Chancellor owed him; and if his Majesty were so tender of him, that he could not find in his Heart to do it himself, they would do That Work for him.* Accordingly, the Commons impeached him of such Crimes, and made them good against him,

that he was sentenc'd to be removed from his Office, to have his Goods confiscated, to pay a fine of 20000 Marks, and a 1000*l.* yearly during Life: Another Author says, that all the Lands which he held of the King's Gift, were seiz'd back into the King's Hands, to hold to him and his Heirs for ever, together with the mean Profits and Issues of the same, saving to the Earl only his *Name* and *Title*, and 20*l.* a year granted out of the Profits of the County of *Sussex*. The Author of a late Tract, (which I have once already quoted for a Mistake) call'd an ENQUIRY into the ORIGIN of *Parliamentary Impeachments*, speaking of this *Michael de la Poole's* Impeachment, says, *What his Crimes were I can't learn from the Historian, but his chiefest Offence seems to Me, that he was an Upstart, for his Father had been a Merchant, and he himself was the Maker of his own Fortune, for which the Nobility hated him.* That he was a Merchant's Son and the Maker of his own Fortune is admitted; but what Historian it is, from whom he could not learn the Nature of his Crimes, this Author has not told Us: I am sure had he consulted Those whom I have seen, he would have found, that no less than nine and thirty Articles were exhibited against him by the Commons, and as long and particular as those against *Cardinal WOLSELY*. And the IXth of the said Articles, particularly, runs thus, " Also by the Encroachment of the
 " *aforesaid Michael*, divers People have been
 " hinder'd of the Benefit of the Common Law
 " of *England*, and put to great Delays, Losses,
 " and Costs; and Statutes and Judgments, justly
 " made upon the necessary Causes in Parliament,
 " have been reversed and nulled by Procurement
 " of the said Traytor, and this by Reason of the
 " great Bribes by Him receiv'd, to the greatest
 " Injury

“ Injury of the King and Kingdom”. As *William Longshampe*, in the Reign of *Richard the First*, attempted to escape in Women’s Apparel, this *Michael de la Poole*, being apprehensive some Designs were laid to surprize him, fled over to *Calais* in Disguise, having shav’d off his Beard, and took upon him to be a Poulterer that had rare Fowls to sell. But being discover’d by the Lord *Beauchamp*, Deputy of *Calais*, he was sent back a Prisoner into *England*: But the King allow’d this iniquitous Favourite his full Liberty, to make the World believe the Earl was more afraid than hurt; and more suspicious than he had Occasion to be. The ensuing Parliament, however, taking him in hand, by unanimous Consent, banish’d him for ever; and, for any thing that appears to the contrary, he dy’d in Exile.

THE next *Chancellor*, whom I can find to have fall’n into Misfortunes, was *George Nevil*, Bishop of *Exeter*, and afterwards Archbishop of *Tork*, and Brother to *Richard Nevil*, the Great Earl of *Warwick*. But he fell not a Sacrifice to the Publick, but to the Disgust of an ungrateful Prince; for *Edward the Fourth*, tho’ in his Imprisonment he had been favour’d by this Prelate, immediately upon his Recovery of the Crown, arrested the Archbishop for high Treason, seized his Plate, Money and Furniture, to the Value of 20000 *l.* and among other rich Moveables took a Mitre from him of an immense Value in Jewels, which the King order’d to be broken, and work’d up into a Crown.

AFTER this Gentleman, I find no *Chancellor* involv’d in any Troubles, (excepting Archbishop *Rotheram*, who was imprison’d by the Order of the Usurper *Richard the Third*) till we come down to the famous Cardinal *WOLSELY*, with
G 2 whose

whose Case, and that of the Lord BACON, I have determin'd to finish this Treatise.

THE immediate Successor, indeed, of the Cardinal in the Chancellorship, Sir Thomas More, lost his Head; but it was after he had voluntarily resign'd up the Seals, and for no Offence in his Administration of that high Office; but, chiefly, for obstinately opposing the King's Assum'd Supremacy of the Church, and his Marriage with *Anne Bullen*. For the least Shadow of Corruption did not darken his Conduct and Integrity upon the Bench; and it is observable, that, having pass'd thro' so many great Employments, and born so many great Offices, yet in all his Time he never purchas'd above One hundred Pounds *per Annum* in Lands, nor left any great Stock of Money behind him at his Death.

I have very little Occasion to mention here Sir *Nicholas Bacon*, who enjoy'd the Seals for about Eighteen Years in the Reign of Queen *Elizabeth*, only for this Reason, that being accused by the Great Earl of *Leicester* of being privy to the Libel of *Hales*, who affirm'd that the Right of the Crown belong'd to the *Suffolk* Family in Case the Queen dy'd without Issue, he was upon this Accusation committed to the Tower.

THE next Chancellor, who falls in Course of Time, that met with any Disturbance from the Parliament, was the Son of this Sir *Nicholas Bacon*, the Great Sir *Francis Bacon*, afterwards Lord *Verulam*, and Viscount *St. Albans*; but with Him, as I said but now, and the Cardinal, I purpose to conclude.

THE Embroilments, in which Archbishop *Williams* was fatigued almost to his dying Hour, have no Place here; because they were not till after his Dismission from the Seals, and not in Consequence of any false Steps, or Indirection, imputed to him as Chancellor.

IN the 15th Year of King *Charles 1st*, Sir *John Finch* being appointed Lord Keeper, and a new Parliament being the next Year called, the *Commons* began to bring Those to an Account who had been guilty of ill Advice to the King, and the Occasion of the many Grievances the Nation labour'd under ; and, among others, prepared to impeach the Lord-Keeper *Finch* of High-Treason. The Keeper upon Notice thereof desired leave of the House to be admitted to speak for himself before them, which was granted ; and a Chair being placed for him near the Bar, he entered the House, carrying the Purse himself. When the Speaker told him that his Lordship might sit down, he made a low Obeisance, and laying down the Seal and his Hat in the Chair, himself leaning on the back of it, he made an eloquent Speech which contain'd a regular Detail of his Conduct, and a Vindication of every part of it as to his Transactions in State Affairs. I shall transcribe a Paragraph of it, since it comprizes a Profession of such Uprightness and Integrity, as every *Chancellor* ought to emulate. “ It pleased the
“ King, says *He*, my gracious Master, after I had
“ serv'd him diverse Years, to prefer me to two
“ Places : First, to be Chief Justice of the Com-
“ mon Pleas, and then Lord Keeper of his Great
“ Seal : I say it in the Presence of God, I was
“ so far from the Thought of the One, and the
“ Ambition of the Other, that if my Master,
“ the King, his Grace and Goodness had not been,
“ I had never enjoyed those Honours. In all
“ that Time, I may speak it with Confidence,
“ these Hands never touch'd *Bribe* or *Reward*,
“ these Eyes were never blinded with Guilt, I
“ took heed to these Affections common to Man,
“ which are aptest to mislead a Judge, *Friendship*
“ and *Hatred*, neither in the One, nor the Other
“ have

“ have I adher’d to “. Many of the Members were much taken with his Eloquence and Carriage, and the sad Circumstance of appearing there to plead in Defence of his Life and Fortune; but, notwithstanding, this Commiseration avail’d him so little, that he was, the same Day, upon several Articles voted a Traytor, and as such accused the next day before the Lords. But he got up earlier than his Accusers, gave them the slip, and made his Escape into *Holland*.

THE Keeper, who succeeded Sir *John Finch*, Sir *Edward Littleton*, did not want his Share of displeasing the Parliament; but it was for acting with Integrity to the King. For, secretly leaving the Parliament, he retir’d to *Tork* to his Majesty, and follow’d his Fortune all along, ’till his own Death: Tho’ the Parliament in 1643, Voted, that if the Lord Keeper *Littleton* did not return with the Great Seal in Fourteen Days, he should lose his Place, and whatsoever should be afterwards Seal’d with that Great Seal, should be void.

WE come now to the Impeachment of *Edward Hyde* Earl of *Clarendon*, who had been made *Chancellor* about two Years and half before the *Restoration*, and was not remov’d from the Seals till the 30th of *August*, 1667. and then it’s incredible with what Rage and Fury every Body fell upon him. Both Houses, at the opening of the next Session, thank’d the King in a more especial Manner, for having displac’d the Earl from the Exercise of any publick Trust and Employment in Affairs of State; and Sir *Edward Seymour* was the first Man that charg’d his Lordship *viva voce* with many great Crimes: Upon which there arose a Debate in the House, how they should proceed upon it; some moving, he should be impeach’d in the Name of the *Commons*,
and

and Articles form'd; others, that Witnesses should be examin'd to see how their Charge might be made good, least, in Case of Failure, it might reflect on the Honour of the House. Which Debate ended in a Vote, that they should reduce their Accusation to Heads. One of the Articles against him, was, *That he had received great Sums of Money for the procuring of the Canary Patent, and other illegal Patents, and granted illegal Injunctions to stop Proceedings at Law against them, and other illegal Patents formerly granted. And another, That he had in a short Time gain'd to himself a greater Estate than could be imagin'd to be gain'd lawfully in so short a Time; and, contrary to his Oath, he had procur'd several Grants under the Seal from his Majesty to himself and Relations, of his Majesty's Lands, Hereditaments and Leases, to the Disprofit of his Majesty.* The House of Commons, having gone thro' with their Articles, order'd Sir Edward Seymour to go up to the House of Lords, and there impeach the Earl of Clarendon of high Treason, and other Crimes and Misdemeanours; and to desire their Lordships to sequester him from Parliament, and commit him to safe Custody; and in convenient Time they would exhibit Articles against him. The Lords insisted not to commit the Earl, because the Accusation against him was only of Treason in general; and while this Privilege was litigated betwixt the Two Houses, he thought fit to withdraw himself, leaving a Petition and Address, as he stil'd it, to the Lords Spiritual and Temporal in Parliament assembled, in which he assured their Lordships, "*That (excepting the King's Bounty,) he had never receiv'd or taken one Penny, but what was generally understood to be the just and lawful Perquisites of his Office, by the constant Practice of the best Times; and had been* far

“ *far from advancing his Estate by indirect Means.*
 “ That his Integrity was blasted by the Malice
 “ of Those, who, he was confident, did not be-
 “ lieve themselves: And therefore he beseeched
 “ their Lordships, that he might not forfeit
 “ their Favour and Protection, by withdrawing
 “ himself from so powerful a Prosecution; in
 “ hopes he might be able, by such withdrawing,
 “ hereafter to appear, and make his Defence;
 “ when his Majesty’s Justice, to which he should
 “ always submit, might not be obstructed nor
 “ controul’d, by the Power and Malice of Those
 “ who had sworn his Destruction. ” This Paper
 was sent down as a Libel to the Lower House;
 and both the Lords and they afterwards concurred
 in it’s being a scandalous and malicious Paper,
 and a Reproach to the Justice of the Nation;
 and order’d it to be burnt. This was follow’d
 with a Bill for Banishing and Disabling the Earl;
 who, after seven Years Exile, dy’d in *France* of the Gout.

We must now descend to give a short Account
 of the Lord CHANCELLOR *Jeffreys*; of whom,
 while he was a Chief Justice, it is observ’d, that
 scarce any Judge in *England* was more *partial* on
 the *Court Side*; and that he used so much *Insolence*
 and *Billingsgate* towards the Prisoners at the Bar,
 as cannot be parallel’d in History. His Inhumanities
 towards the Duke of *Monmouth*’s Adherents
 were execrably Notorious; and to give no stronger
 Instance of his CORRUPTION of another kind,
 he took a Bribe of 14500 l. of Mr. *Prideaux* to
 save his Life. Upon the Prince of *Orange*’s Ar-
 rival with an Army in *England*, this CHANCEL-
 LOR, who had been instrumental in having the
 City Charter taken away in 1683, upon King
James’s retiring, withdrew privately in the Dead
 of Night down the *Thames*, in order to go for
France.

France, The Great Seal was afterwards found by a Fisherman in the *Thames*; the Chancellor in a Disguise put himself on Board a Collier; but not thinking himself safe there, was at last apprehended at a little pedling Alehouse in *Wapping*, hurried under a Guard to the Lord Mayor, and by the Lords of the Council was committed to the Tower, where he died. Some thought, if he had liv'd a little longer, he would have been call'd to an Account for his Insolencies and Male-Administration; others believ'd, that he would have escap'd with Impunity. His only Son died without Issue, so that the Honour dy'd with him: And whether thro' Extravagancy, or Fatality, it is credibly affirm'd, There is scarce any of the Chancellor's large acquir'd Fortune left in the Family.

THE next and last Lord Chancellor, who fell under the Resentments of the Parliament, was *John Lord Somers*, who was Impeached by the House of Commons in fourteen Articles; the most Criminal whereof were, that he had presum'd to affix the Great Seal to the Commission for carrying on a Treaty of Peace without communicating the same to the other Lords Justices, or the Privy-Council; with Blanks left for Commissioners Names to be inserted beyond Sea; and *That, not being content with the Profits of his Office as Chancellor, and an Annual Pension of 4000 l. had, contrary to his Oath, procur'd many unreasonable Grants of the Crown.* The Consequence of this Impeachment, indeed, was, that the two Houses wrangling upon Forms, and the Time of Tryal, the Lords appointed a peremptory Day, and the Commons not being ready to make good their Charge, his Lordship was acquitted, and the Impeachment dismiss'd.

I shall now turn back, according to my Promise, to look into the Cases of those two Great *Delinquents*, Cardinal WOLSELY, and Francis, Lord BACON.

The *Cardinal* will stand, as long as the Records of our *English* History remain, an Instance of the Doubtfulness and Instability of Human Glory; and I don't know which we are most to wonder at, the transcendent Pomp and State in which he so long lorded it o'er the Nation, or the Suddenness and Distress of his Downfall. His Ambition was as tow'ring, as his Rise was precipitate; and his Avarice as insatiable, as his Income and Revenues were immoderate. So that if his Parts and rare Talents lifted him with Merit to those high Dignities which he possess'd; his Vices, and the Gratification of his exorbitant Passions, with equal Justice, overturn'd the Fabrick of his ill-supported Grandeur. To view him in his Bloom and Declension of Honours, he will appear, in the one State, as an Object of unequal'd Pride and Ostentation; in the Other, an Object of Pity, tho' of Insolence and Presumption justly mortified. At one Time, we may find him with *Crosses* on silver Pillars carried in State before him; with Palaces at his Command, more splendid in the Furniture than Those of his Royal Master; attended by Peers in servile Offices, and expecting even Dukes to hold the Bason to him; At another, we find Him even with his Menial Retinue thrunk, commanded to the Retreat of one single House, and That unfurnish'd either of a Bed or Sheets, of Tablecloaths, or Dishes to serve his Meat in; and himself unfurnish'd of Money to buy any Meat, but what he was forc'd to borrow. Gaze on this Picture of Penury, ye Proud and Arrogant Favourites of Fortune, and let your wonted Vanity abate!

The

The Causes of his Ruin have been rather guess'd at, than ascertain'd; or, at least, have been deliver'd with such Diversity, that we are left to pick and chuse Those which appear most probable to Us. Some say, that, delivering certain Dispatches of State for the King's Perusal, he unhappily inclos'd in the Packet an Inventory of the vast Wealth which he had accumulated, and likewise a Letter to the *Pope* to prevent his Dispensation for the King's Marriage with *Anne Bullen*. Others, that the rising Interest of *Bishop Cranmer*, and the Advances of the *Protestant Religion*, made his Removal from Trust and Power unavoidable. But we need go no further to search for Reasons, whereon to found his Destruction, than to his own Conduct. His unsufferable *Insolence* to the Subjects of the highest Rank and Quality, and his repeated *Exactions*, by which he drain'd the People's Substance, made him so obnoxious to their Persecution, when they could find an Handle for it, that it is rather to be admired how he came to stand so long, than that he fell no sooner. In short, all Concurrences and Aggravations centring in a Point, he fell like an unwieldy *Colossus*, born down with his own Weight. The *Cardinal* at once came under such *Disgrace* and *Displeasure*, that He, who had before the *Caresses* of the Court, and the *Smiles* of his Sovereign, now encountred Nothing but the *Fleerings* of the *Nobility*, and the *Frowns* of the King. He was, by one Mandate, dispossest of the *Seals*, and outed of all his Places and Benefices, excepting the Archbishoprick of *Tork*, and Bishoprick of *Winchester*; had his Estate confiscated, and costly Goods and Treasure all seiz'd to the Use of the King: And then, to give him still the deeper Wound, no less than Forty four Articles of *Impeachment* were exhibited against him, pre-

fac'd with this Remark, That *These were but a
 few in Comparison of all his Enormities, Excesses,
 and Transgressions committed against the Laws.*
 One of the Articles, in which as *Chancellor*, he
 had been particularly faulty, alledg'd, " That
 " he had granted many Injunctions by Writ, and
 " the Parties never call'd thereunto, nor Bill
 " put in against them: And by reason there-
 " of, diverse of the Subjects had been put
 " from their lawful Possessions; and by such
 " Means he had brought the more Party of the
 " Suitors of the Realm before himself, whereby
 " he and diverse of his Servants had gotten much
 " Riches, and the Subject suffered Great
 " Wrongs. " And the Last of the Articles set-
 forth, " That the Lord Cardinal by his *Outragi-
 " ous Pride*, had greatly shadow'd a long Season
 " of his Majesty's Honour, and by his *insatiable
 " Avarice* and *ravenous Appetite* to have Riches
 " and Treasure without Measure, had so grie-
 " vously oppressed the poor Subjects with so ma-
 " nyfold Crafts of *Bribery* and *Extortion*, that
 " the Commonwealth of the Realm was thereby
 " greatly decay'd and impoverish'd; and also
 " by his *Cruelty, Iniquity, Affection* and *Partiali-
 " ty*, had subverted the due Cause and Order of
 " the Laws, to the Undoing of a great Number
 " of his Grace's loving People. " The long De-
 tail of Offences contained in the Whole, was
 clos'd with this Petition to the King, That of his
 excellent Goodness, towards the Weal of his
 Realm, and Subjects of the same, it would please
 him to set such Order and Direction upon the
 said Lord CARDINAL, as might be to the terrible
*Example of Others to beware so to offend his Grace
 and his Laws hereafter: And that he be so provid-
 ed for, that he never have any Power, Jurisdiction,
 or Authority hereafter to trouble, vex and impove-*
 rish

risk the Commonwealth of the Realm as he had done
 theretofore, to the great Hurt and Damage of every
 Man almost high and low. These Articles were
 read in the House, and if not otherwise prov'd,
 yet they were confess'd afterwards under the
 Cardinal's own Hand: An Heart-breaking Im-
 position, if we will measure him by his Pride!
 How ever the King, and the Nation, seem'd con-
 tent with only *pluming* him for the present, his
 Enemies, taking Care he should not have Oppor-
 tunities to insinuate himself into new Favour,
 got the King to command him to retire to *Tork*,
 and not to presume to come Southward from
 thence without his particular Leave. The Car-
 dinal, to comfort himself, or at least to keep his
 Ostentation alive, under all the Weight and Pres-
 sure of Calamity, now turn'd his Thoughts and
 Resolutions on his Instalment at *Tork*; and made
 magnificent Preparations for that Ceremonial:
 Among the rest, he applied to the King to bor-
 row the Mitre and Pall, which he was wont to
 use upon any great Solemnity: Upon the Pre-
 sumption of which his Majesty could not help
 breaking out into this Reflection, *What a strange*
Thing is this, that so much Pride should reign in a
Man, that is quite trodden under Foot! The Day
 before this purpos'd Instalment, the Earl of
Northumberland was sent down with a Gentleman
 of the Privy Chamber, and they were joyn'd in
 Commission to arrest the Cardinal of *High Treas-*
on. They found him at *Cawood* near *Tork*, from
 whence they convey'd him to *Pomfret*, and from
 thence to the Earl of *Shrewsbury's* at *Sheffield Park*,
 where he was seiz'd with a sudden Sickness. The
 Day after he found himself Distemper'd, he rode
 to *Nottingham*, and the next Day to *Leicester Ab-*
bey; in which last Journey his Illness encreas'd
 with such Violence, that he was ready to fall
 from

from his Mule. A few feavourish Days put a Period to his Misery ; and the Lieutenant of the Tower, who was sent down to bring him up to London, found his Prisoner a dead Carcass. Our Histories say, his last Words were a Melancholly Reflection on himself, and a Reproach on the King for giving him up to his Enemies: *Had I serv'd the God of Heaven, said He, as faithfully as I did my Master on Earth, he had not forsaken me in my Old Age, as the other has done.* But 'tis much to be fear'd, notwithstanding this pious Profession, the Cardinal was ever more faithful to his own Interest, than to the Service of his Prince.

I have now done with WOLSELY, and come to speak of my Lord BACON, who was equal, or rather superior, to the Other in the Endowments of his Mind, tho' not in the Artifices and Practice of *State-Wickedness*. The Synopsis of his Character, in WILSON, is, That he was a fit *Jewel* to have beautified and adorned a flourishing Kingdom, if his *Flaws* had not disgrac'd the Lustre that should have set him off. One Fault he had, says another Author, that he was above the Age he liv'd in, in his Bounties to such as brought him Presents ; and over-indulgent to his Servants, whose Rise prov'd his Fall. He came to a Censure, for the most simple and ridiculous Follies, that ever entred into the Heart of a Wise Man. His Crimes were *Bribery* and *Extortion* ; for Both which he had often condemn'd Others as a *Judge*, and now comes to suffer as a *Delinquent*. These were not, 'tis said, bare and unsupported Imputations, but proved and aggravated against him with so many Circumstances, that they fell foully on him both in Relation to his Reception, and his expending of them : He was so full of his own Conviction, that he threw himself and Cause at the Feet of his Judges,

es, before he was condemn'd. As his Submission and Supplication to the Lords has been reckon'd a Piece of fine and moving Oratory; I shall give all that Part of it to my Readers, which concerns the only Defence that he made.

May it please your Lordships.

I shall humbly crave at your Hands a benign Interpretation of That which I shall now write: For Words that come from wasted Spirits, and oppressed Minds, are more safe, in being deposited to a noble Construction, than being circled with any reserv'd Caution.

This being mov'd, (and as I hope, obtained of your Lordships,) as a Protection to all I shall say, I shall go on; but with a very strange Entrance, as may seem to your Lordships at first: For in the Midst of a State of as great Affliction, as I think a Mortal Man can endure, (Honour being above Life,) I shall begin with the professing of Gladness in some Things.

The First is, that hereafter the Greatness of a Judge, or Magistrate, shall be no Sanctuary or Protection to him against Guiltiness, which is the Beginning of a golden Work.

The next; That after this Example, it is like that Judges will fly from every thing in the Likeness of Corruption (tho' it were at a great Distance) as from a Serpent; which tends to the purging of the Courts of Justice, and reducing them to their true Honour and Splendour: And in these two Points (God is my Witness) tho' it be my Fortune to be the Anvil upon which these two Effects are broken and wrought, I take no small Comfort. But to pass from the Motions of my Heart, (whereof God is my Judge) to the Merits of my Cause, whereof your Lordships are Judges, under God and his Lieutenant: I do understand, there hath been heretofore expected from me some Justification; and therefore

I have chosen one only Justification, instead of all others, out of the Justification of Job. For after the clear Submission and Confession which I shall now make unto your Lordships, I hope, I may say and justify with Job, in these Words, I have not hid my Sin, as did Adam, nor conceal'd my Faults in my Bosom. This is the only Justification, which I will use.

It resteth therefore, that, without Figleaves, I do ingenuously confess and acknowledge, that having understood the Particulars of the Charge, not formally from the House, but enough to inform my Conscience and Memory, I find Matter sufficient and full, both to move me to desert my Defence, and to move your Lordships to condemn and censure me. Neither will I trouble your Lordships, by singling those Particulars, which I think might fall off. Quid te Exempla juvant, spinis de pluribus Uva? Neither will I prompt your Lordships to observe upon the Proofs, where they come not home, or the Scruples touching the Credits of the Witnesses. Neither will I represent to your Lordships, how far a Defence might in diverse Things extenuate the Offence, in respect of the Time, and manner of the Guilt, or the like Circumstances: But only leave these Things to spring out of your noble Thoughts, and Observations of the Evidence, and Examinations themselves; and charitably to wind about the Particulars of the Charge, here and there, as God shall put into your Minds, and so submit my self wholly to your Piety and Grace.

And now I have spoken to your Lordships as Judges, I shall say a few Words unto you as Peers and Prelates, humbly commending my Cause to your noble Minds, and magnanimous Affections.

Your Lordships are not simply Judges, but Parliamentary Judges: you have a further Extent of Arbitrary Power than other Courts; and if you be
not

not tied by ordinary Course of Courts, or Precedents in Points of Strictness and Severity, much less in Points of Mercy and Mitigation. And yet if any Thing which I shall move, might be contrary to your honourable and worthy Ends (the introducing a Reformation) I should not seek it.

The Questioning of Men in eminent Places hath the same Terror, tho' not the same Rigour with the Punishment. But my Cause stays not there: For my humble Desire is, that his Majesty would take the Seal into his Hands, which is a great Downfall, and may serve, I hope, in itself for an Expiation of my Faults. Therefore if Mercy and Mitigation be in your Lordships Power, and no way cross your Ends, why should I not hope of your Favour and Commiseration? Your Lordships will be pleased to behold your chief Pattern, the King our Sovereign, a King of incomparable Clemency, and whose Heart is inscrutable for Wisdom and Goodness. And your Lordships will remember, there sat not these hundred Tears before a Prince in your House, and never such a Prince, whose presence deserveth to be made memorable by Records, and Acts, mix'd of Mercy and Justice. Your selves are either Nobles (and Compassion ever breatheth in the Veins of Noble Blood) or Reverend Prelates, who are the Servants of him that would not break the bruised Reed, nor quench the smoking Flax. You all sit upon a high Stage, and therefore cannot but be sensible of the Changes of humane Conditions, and of the Fall of any from high Place.

Neither will your Lordships forget, that there are Vitia temporis, as well as Vitia hominis: And the beginning of Reformation hath the contrary Power to the Pool of Bethesda: For That had strength to cure him only that was first cast in, and This hath Strength to hurt him only that is first cast in: And for my Part, I wish it may stay there, and go no further.

Lastly, I assure my self, your Lordships have a noble Feeling of Me, as a Member of your own Body, and One that in this very Session, had some Taste of your loving Affections, which I hope was not a Lightning before the Death of them, but rather a Spark of that Grace, which now in the Conclusion, will more appear. And therefore my humble Suit to your Lordships is, that my penitent Submission may be my Sentence, the Loss of my Seal my Punishment; and that your Lordships would recommend me to His Majesty's Grace and Pardon for All that is past &c.

THUS, as WILSON says, was this great Spirit brought low; tho' this Humiliation might have raised him up again, if his Offences had not been so weighty as to keep him down.

THE Case of the CARDINAL, and of this unhappy Gentleman, differs most in this Circumstance, that the Cardinal fell with a general Odium, my Lord Bacon, almost, with as general a Pity. The One was a Man of Austerity, Insolence, Revenge, and Unmercifulness; the Other was of a candid and complacent, generous and unresenting, Temper. The One had incens'd and pillag'd the whole Nation; the other had provok'd but a few Suitors of the Court, with taking extorted Perquisites. The Cardinal, was not only a Chancellor and Archbishop, but held so many other Preferments of Profit and Honour, that his vast Wealth and over-grown State made him, like a Meteor, the object of Admiration and of Terrour.

And such was his Avarice and Extortion, in every Post he held, that he was not more wonder'd at, than detested. All Men in Favour, as it has been observ'd, are envied by the Common-People, tho' they do administer Justice truly: But much more will the Emotions of their Envy be, or rather of a just and laudable Indignation, against very wicked, cruel, and corrupt Ministers.

BUT

BUT, tho' my Lord *Bacon* was more forgiven in the Minds of Men, I don't know well to determine with my self, which of the Two labour'd under the heaviest Misfortunes at the End. My Lord *Bacon* lost his *Peerage* and *Seal*, and the Scale was wavering whether he should carry the Title of Viscount St. *Alban's* to his Grave, and that was all he did; having only left a poor empty Being, which lasted not long with him, his Honour dying before him. And tho' he had a Pension allowed him by the King, he wanted to his Last; living obscurely in his Lodging at *Greys-Inn*, where his Loneliness and desolate Condition wrought upon his ingenuous, and therefore then more melancholly Temper, that he pined away: And had this Unhappiness after all his Height of Plenitude, to be denied Beer to quench his Thirst: For having a sickly Taste, he did not like the Drink of the House, but sent to Sir *Fulk Grevil* Lord *Brook*, in the Neighbourhood, now and then, for a Bottle of his Beer; and after some Grumbling, the Butler had preremptory Orders to deny him.

As Bribery and Corruption in a *Chancellor*, are attended with *Perjury*; a Remark which I have before made from my Lord *Coke*: It looks as if Providence levell'd its particular Resentments at Those who are Guilty of them. But it is *most* Charity to say *least* on this Head. I will therefore interpose no Judgment; but conclude with an Observation of Dr. *Fiddes* on Cardinal *WOLSELY*; *Amidst the Affluence of a great Fortune, a Man must be very weak, or very wicked, who does not preserve a good Reputation.*